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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,583	09/05/2006	Guillaume Cassin	295422US0PCT	3378
22850	7590	01/26/2010	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			MATTISON, LORI K	
			ART UNIT	PAPER NUMBER
			1619	
			NOTIFICATION DATE	DELIVERY MODE
			01/26/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/591,583	<b>Applicant(s)</b> CASSIN ET AL.	
	<b>Examiner</b> LORI MATTISON	<b>Art Unit</b> 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 60-118 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 60-118 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

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## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group 1, claim(s) 60-115, drawn to a cosmetic process for softening wrinkles of wrinkled skin comprising applying to said wrinkled skin a cosmetic product comprising in a physiologically acceptable medium suitable for topical application to the skin of the face: from 0.1 to 20% by weight, based upon the total weight of the composition of at least one tensioning agent.

Group 2, claim(s) 116, drawn to a cosmetic composition comprising a physiologically acceptable medium for topical application to the skin of the face: from 0.1 to 20% by weight based on the total weight of the composition of at least one tensioning agent in the form of colloid particles of inorganic fillers and at least one dispersion of solid particles of a grafted ethylenic polymer in a liquid fatty phase.

Group 3, claim(s) 117, drawn to a method of using the dispersion of solid particles of a graft ethylenic polymer as defined according to claim 60 for improving the persistence of the tensioning effect provided by said tensioning agent.

Group 4, claim(s) 118, drawn to a method of using the dispersion of solid particles of grafted ethylenic polymer as defined in claim 60 in a cosmetic composition comprising as a tensioning agent, an aqueous dispersion of colloidal inorganic particles, for preventing whitening of the skin.

The inventions listed as Groups 1-4 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The cosmetic composition is taught by US Patent No. 5,219, 560 (Suzuki, 1993) and WO 03/082454 (Gotou, 2003), utilizing US Publication No. 2005/0106198 (Gotou, 2005) as the English translation. Example 23 of Suzuki teaches a milky lotion (i.e. cosmetic composition that may be applied to the skin of the face; column 31, lines 45-end; column 32, lines 1-35). The composition comprises water (i.e. physiologically acceptable medium). The composition comprises an acryl-silicone graft copolymer (i.e. grafted ethylenic polymer)

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in an amount of 3.2% by weight which was added to a heated oil phase comprising stearyl alcohol, lipophilic glycerol monostearate, and isoparaffin. The composition also comprises inorganic particles, titanium dioxide in an amount of 0.5 % by weight. Suzuki does not teach that the titanium dioxide particles were colloidal particles. Gotou teaches that titanium oxides are colloidal particles which are finely dispersed (English translation, Gotou, page 3, paragraph 32). Gotou teaches that finely dispersed particles are utilized to cover up liver spots and other blemishes, correct skin color, tint the skin to an attractive color, protect the skin from sunburn by cutting ultraviolet rays, and to absorb sweat and sebum (English Translation, Gotou, page 4, paragraphs 39-44). It would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have substituted Suzuki's titanium dioxide with the colloidal titanium of Gotou because the colloidal titanium dioxide particles of Gotou provides numerous desirable features to skin.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- A) Liquid fatty phase
- B) Tensioning Agent
- C) Grafted Ethylenic Polymer and monomers

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

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are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

- A) Liquid fatty phase-claims 80-103, 109, and 110.
- B) Tensioning agent-claims 65-67, 91, 92
- C) Grafted Ethylenic Polymer and monomers-claims 68-79, 103-108

The following claim(s) are generic: 60-64, 112-118.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

A) Liquid fatty phase- silicone macromonomers of formula VIII of the fatty phase are known. See Suzuki (column 19, lines 1-5).

B) Tensioning agents-colloidal particles of inorganic fillers were known and taught by Gotou (English Translation, Gotou, page 3, paragraph 32).

C) Grafted Ethylenic Polymer and monomers-acrylic monomers of formula IV were known (i.e. methylmethacrylate; Suzuki, column 16, lines 65-end). Grafted ethylenic polymers were known (column 19, lines 1-5).

**It is observed that claim 87 and claims 88-90, which ultimately depend from claim 87, lack antecedent basis. An additional restriction requirement may be forthcoming should a preliminary amendment correcting dependency be filed.**

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the

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requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product

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are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LORI MATTISON whose telephone number is (571)270-5866. The examiner can normally be reached on 8am-6pm (Monday-Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne (Bonnie) Eyler can be reached on (571)272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. M./

Examiner, Art Unit 1619

/Anne Marie Grunberg/

Supervisory Patent Examiner, Art Unit 1661